

COMMITTEE REPORT

MADAM PRESIDENT:

The Senate Committee on Tax and Fiscal Policy, to which was referred Senate Bill No. 362, has had the same under consideration and begs leave to report the same back to the Senate with the recommendation that said bill be AMENDED as follows:

- 1 Page 2, line 17, after "issued" delete "." and insert "**or renewed.**".
- 2 Page 3, between lines 11 and 12, begin a new paragraph and insert:
- 3 "SECTION 2. IC 6-2.5-8-5 IS AMENDED TO READ AS
- 4 FOLLOWS [EFFECTIVE JANUARY 1, 2007]: Sec. 5. A certificate
- 5 issued under section ~~+~~ 3 or 4 of this chapter is valid so long as the
- 6 business or exempt organization is in existence."
- 7 Page 4, between lines 10 and 11, begin a new paragraph and insert:
- 8 "SECTION 4. IC 6-8.1-5-1 IS AMENDED TO READ AS
- 9 FOLLOWS [EFFECTIVE JANUARY 1, 2007]: Sec. 1. **(a) As used in**
- 10 **this section, "letter of finding" includes a supplemental letter of**
- 11 **finding.**
- 12 ~~(a)~~ **(b)** If the department reasonably believes that a person has not
- 13 reported the proper amount of tax due, the department shall make a
- 14 proposed assessment of the amount of the unpaid tax on the basis of the
- 15 best information available to the department. The amount of the
- 16 assessment is considered a tax payment not made by the due date and
- 17 is subject to IC 6-8.1-10 concerning the imposition of penalties and
- 18 interest. The department shall send the person a notice of the proposed
- 19 assessment through the United States mail.
- 20 ~~(b)~~ **(c)** If the person has a surety bond guaranteeing payment of the
- 21 tax for which the proposed assessment is made, the department shall

furnish a copy of the proposed assessment to the surety. The notice of proposed assessment is prima facie evidence that the department's claim for the unpaid tax is valid. The burden of proving that the proposed assessment is wrong rests with the person against whom the proposed assessment is made.

~~(c)~~ **(d)** The notice shall state that the person has ~~sixty (60)~~ **thirty (30)** days from the date the notice is mailed to pay the assessment or to file a written protest. If the person files a protest and requires a hearing on the protest, the department shall:

(1) set the hearing at the department's earliest convenient time; and

(2) notify the person by United States mail of the time, date, and location of the hearing.

~~(d)~~ **(e)** The department may hold the hearing at the location of its choice within Indiana if that location complies with IC 6-8.1-3-8.5.

~~(e)~~ **(f)** No later than sixty (60) days after conducting a hearing on a protest, or after making a decision on a protest when no hearing is requested, the department shall issue a letter of findings and shall send a copy of the letter through the United States mail to the person who filed the protest and to the person's surety, if the surety was notified of the proposed assessment under subsection ~~(a)~~: **(b)**. The department may continue the hearing until a later date if the taxpayer presents additional information at the hearing or the taxpayer requests an opportunity to present additional information after the hearing.

~~(f)~~ **(g)** A person that disagrees with a decision in a letter of finding may request a rehearing not more than thirty (30) days after the date on which the letter of finding is issued by the department. The department shall consider the request and may grant the rehearing if the department reasonably believes that a rehearing would be in the best interests of the taxpayer and the state.

~~(g)~~ **(h)** If a person disagrees with a decision in a letter of finding, the person may appeal the decision to the tax court. However, the tax court does not have jurisdiction to hear an appeal that is filed more than ~~one hundred eighty (180)~~ **forty-five (45)** days after the date on which:

(1) the letter of finding is issued by the department, **if the person does not make a timely request for a rehearing under subsection (g) on the letter of finding; or**

(2) **the department issues a denial of the person's timely request for a rehearing under subsection (g) on the letter of finding.**

~~(h)~~ **(i)** The tax court shall hear an appeal under subsection ~~(g)~~ **(h)** de novo and without a jury. The tax court may do the following:

(1) Uphold or deny any part of the assessment that is appealed.

(2) Assess the court costs in a manner that the court believes to be equitable.

(3) Enjoin the collection of a listed tax under IC 33-26-6-2.

(j) The department shall demand payment, as provided in IC 6-8.1-8-2(a), of any part of the proposed tax assessment, interest, and penalties that it finds owing because:

(1) the person failed to properly respond within the ~~sixty (60)~~ **thirty (30)** day period;

(2) the person requested a hearing but failed to appear at that hearing; or

(3) after consideration of the evidence presented in the protest or hearing, the department finds that the person still owes tax.

(k) The department shall make the demand for payment in the manner provided in IC 6-8.1-8-2.

(l) Subsection (a) (b) does not apply to a motor carrier fuel tax return."

Page 12, between lines 39 and 40, begin a new paragraph and insert:

"SECTION 9. IC 6-8.1-9-2 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2007]: Sec. 2. (a) If the department finds that a person has paid more tax for a taxable year than is legally due, the department shall apply the amount of the excess against any amount of that same tax that is assessed and is currently due. The department may then apply any remaining excess against any of the listed taxes that have been assessed against the person and that are currently due. If any excess remains after the department has applied the overpayment against the person's tax liabilities, the department shall either refund the amount to the person or, at the person's request, credit the amount to the person's future tax liabilities.

(b) If a court determines that a person has paid more tax for a taxable year than is legally due, the department shall refund the excess amount to the person.

(c) An excess tax payment that is not refunded or credited against a current or future tax liability within ninety (90) days after the date the refund claim is filed, the date the tax payment was due, or the date the tax was paid, whichever is latest, accrues interest from the date the ~~tax payment was due or the date the tax was paid; whichever refund claim~~ **is later filed** at the rate established under IC 6-8.1-10-1 until a date, determined by the department, that does not precede by more than thirty (30) days, the date on which the refund or credit is made.

(d) As used in subsection (c), "refund claim" includes an amended return that indicates an overpayment of tax."

- 1 Renumber all SECTIONS consecutively.
 (Reference is to SB 362 as introduced.)

and when so amended that said bill do pass .

Committee Vote: Yeas 10, Nays 0.

Senator Kenley, Chairperson